

Internal Revenue Service

Number: **200749007**
Release Date: 12/7/2007

Index Number: 992.02-00

In Re:

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:INTL:B6
PLR-126687-07

Date:
August 31, 2007

Legend

Taxpayer =

Parent =

Subsidiary =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Accounting Firm 1 =

Accounting Firm 2 =

Accounting Firm 3 =

PLR-126687-07

Dear :

This responds to your letter dated June 6, 2007, requesting a ruling that:

(1) Subsidiary's attempted election under section 992(b) on Date 1 to be treated as a domestic international sales corporation ("DISC") was, as a result of untimely filing, never effective, and therefore, that; (2) Subsidiary was not a DISC as a result of the purported Date 1 election. In the alternative, in the event we determine that the election was valid, you requested relief under §301.9100-3 (as Subsidiary's successor-in-interest) to terminate Subsidiary's election as of Date 2.

Facts

Subsidiary, a State A corporation, was formed on Date 3 as a wholly-owned subsidiary of Parent. At the time Subsidiary was formed, Accounting Firm 1 was Parent's primary tax and accounting advisor. On the advice of Accounting Firm 1, Parent had hired Accounting Firm 2 to assist in Subsidiary's formation. Parent and Subsidiary expected Accounting Firm 2 to perform all the necessary actions to form Subsidiary as a DISC, including the preparation and filing of a DISC election. Taxpayer represents that Accounting Firm 2 never prepared or filed a DISC election with respect to Subsidiary.

In late Year 1, Parent and Subsidiary learned that Accounting Firm 2 never filed Subsidiary's DISC election. Accounting Firm 1 recommended that Subsidiary make the election to be treated as a DISC, and Subsidiary filed the election on Date 1. Subsidiary attached a letter to the election requesting that the election be accepted as timely filed for Subsidiary's first taxable year (i.e., Subsidiary requested that the election be treated as retroactive to Subsidiary's formation roughly three years earlier).

On Date 4 (approximately nine months after the Date 1 election was filed), Taxpayer acquired Parent. Parent and Subsidiary changed their taxable year from a calendar taxable year to a taxable year ending Date 5 when they were acquired by Taxpayer. In anticipation of this acquisition, Accounting Firm 3 had advised Taxpayer and Parent to terminate Subsidiary prior to the acquisition. However, the termination was not effected as planned. Subsidiary remained in existence until Date 6 (i.e., for two years after the acquisition), at which time Taxpayer realized that Subsidiary still existed and dissolved it.

Subsidiary never earned income or otherwise conducted any business operations. Neither Parent nor Taxpayer claimed any benefits or other treatment under the DISC provisions with respect to Subsidiary.

PLR-126687-07

Taxpayer claims that the Date 1 DISC election was ineffective because it was not filed in accordance with section 992(b) or the regulations thereunder in §1.921-1T(b)(1).¹ Therefore, Taxpayer believes Subsidiary's Date 1 filing was not a valid election to be treated as a DISC.

Law

Sections 991-997 relate to the tax treatment of DISCs and their shareholders. To qualify as a DISC, a taxpayer must, among other requirements, elect to be treated as a DISC under section 992(b)(1)(A), which provides:

An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

The second and third sentences of §1.921-1T(b)(1)(Answer 1) provide:

A corporation electing interest charge DISC status must file Form 4876A. A corporation electing to be treated as a FSC, small FSC, or interest charge DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Analysis

Section 992(b)(1)(A) provides generally that a corporation may elect to be treated as a DISC for a taxable year at any time during the 90-day period immediately preceding such taxable year. For example, if a corporation that has a calendar taxable year wants to elect to be treated as a DISC with respect to its 2008 taxable year, the corporation must make such election during the final 90 days of 2007.

The rule described in section 992(b)(1)(A) does not permit a newly-formed corporation to elect to be treated as a DISC for its first taxable year because the corporation is not in existence during the 90-day period preceding its first taxable year. Hence, §1.921-1T(b)(1) provides that a newly-formed corporation may elect to be treated as a DISC for its first taxable year by making such election during the first 90 days of its first taxable year.

To summarize, a corporation may elect to be treated as a DISC during one of two 90-day periods. A corporation intending to be treated as a DISC for its first taxable year must make the election during the first 90 days of its first taxable year. This election will

¹ Taxpayer's ruling request refers to the rules for making an election contained in §1.992-2. We assume Taxpayer intended to refer to the rules in §1.921-1T(b)(1), which are the relevant rules and incorporate portions of the §1.992-2 rules by reference. Therefore, we refer to §1.921-1T(b)(1) throughout this letter.

PLR-126687-07

be effective for the corporation's first taxable year and each taxable year thereafter. A corporation intending to be treated as a DISC for a taxable year that is not its first taxable year must make the election during the last 90 days of the preceding taxable year. This election will be effective for the taxable year following such 90 day period and each taxable year thereafter.

In the present case, Subsidiary did not make a DISC election during the first 90 days of its first taxable year. Rather, it attempted to make the election about three years after its formation. Nor did Subsidiary make a DISC election during a 90-day period preceding any of its taxable years. Rather, Subsidiary attempted to make the election on a date that was about nine months before the beginning of its next taxable year (*i.e.*, Subsidiary's taxable year that began on Date 2).² In other words, Subsidiary's election was not timely filed under the rules provided in section 992(b)(1)(A) and the applicable portion of §1.921-1T(b)(1)(Answer 1). Therefore, Subsidiary's attempted Date 1 election to be treated as a DISC was not valid.

Because we determine that the purported DISC election was not valid, we need not address Taxpayer's alternative ruling request.

Rulings

Based on the information submitted and the facts and representations made, we determine that the election filed on Date 1 to treat Subsidiary as a DISC was ineffective as a result of untimely filing. Therefore, Subsidiary did not qualify as a DISC as a result of the Date 1 filing.

Caveats

We express no opinion on any provisions of the Code or regulations not specifically covered by the above ruling.

The ruling given in this letter is based on facts and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

Procedural Statements

This ruling is directed only to Taxpayer. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

² Even if Subsidiary had remained on a calendar taxable year, the attempted election would have been about eleven months prior to the beginning of its next calendar taxable year and, therefore, not during the 90-day period preceding the beginning of a taxable year.

PLR-126687-07

Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Christopher J. Bello
Senior Technical Reviewer, Branch 6
Office of the Associate Chief Counsel
(International)

CC: